

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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NOAH HANCOCK SIMMONS, II,

Plaintiff,

DECISION AND ORDER  
04-CV-6610

v.

GIAMBRUNO, et al.,

Defendants.

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Currently pending before the Court are plaintiff's motions for appointment of counsel (Docket #48, #57 and #58), plaintiff's motions to amend the complaint (Docket #49 and #55), and plaintiff's motion to take the deposition of defendant Gregory Derkovitz (Docket #56).

The applications for appointment of counsel (Docket #48, #57 and #58) and to amend the complaint (Docket #49 and #55) are **denied**, for the same reasons discussed in the Court's prior Decisions and Orders (Docket #38, 44 and 52).<sup>1</sup>

On March 26, 2008, a telephone conference was held with plaintiff and defendants' counsel with respect to plaintiff's motion to take the deposition of defendant Derkovitz (Docket #56). During the telephone conference, plaintiff was advised that the Court could not pay the costs of the deposition and suggested the plaintiff consider using interrogatories to obtain information from

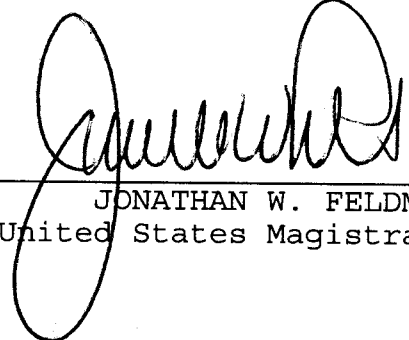
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<sup>1</sup> Plaintiff's motion for counsel (Docket #48) is also denied on grounds that it was superseded by the Court's Decision and Order in Docket #52.

Derkovitz. Plaintiff indicated that due to his financial situation he will not be pursuing a deposition of Derkovitz and would rather have the matter sent back to Judge Siragusa to set a trial date then draft interrogatories. Accordingly, plaintiff's motion to depose defendant Derkovitz (Docket #56) is deemed to be **withdrawn without prejudice**.

Finally, plaintiff stated that he wanted to make an application to the trial judge for appointment of counsel to represent him at trial. Plaintiff was advised that at this stage of the litigation, such application should be made at the trial date status conference to be scheduled with Judge Siragusa. The undersigned will advise Judge Siragusa that this matter is now ready for trial.

**SO ORDERED.**



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JONATHAN W. FELDMAN  
United States Magistrate Judge

Dated: March 26, 2008  
Rochester, New York